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INGRASSIA FISHER & LORENZ, P.C.
7150 E. CAMELBACK, STE. 325
SCOTTSDALE, AZ 85251

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AUG 04 2005

OFFICE OF PETITIONS

In re Application of	:	
Chadda et al.	:	
Application No. 10/052,010	:	DECISION ON APPLICATION
Filed: January 17, 2002	:	FOR
Atty Docket No. SFI 1017	:	PATENT TERM ADJUSTMENT
	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed March 2, 2005. Applicants request that the initial determination of patent term adjustment be corrected from zero (0) days to at least two hundred forty-three (243) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is two hundred forty-three (243) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On February 10, 2005, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 0 days. Applicants timely filed the instant application for patent term adjustment¹. Applicants dispute the reduction of 140 days. Furthermore, applicants assert entitlement to a period of adjustment of greater than 17

¹ Office records show that the Issue Fee payment was received on May 5, 2005.

days for Office delay in taking action in response to their response after non-final Office action. Applicants assert that their response to the restriction requirement of May 12, 2003, was faxed to the Office within three months on June 12, 2003 (and resubmitted on petition filed December 30, 2003). Thus, the date of December 30, 2003 should not have been used for their date of response and no period of reduction should have been entered. Further, given the date of receipt of June 12, 2003, applicants assert entitlement to an adjustment under § 1.703(a)(2) of greater than 17 days for Office delay. Specifically, applicants request a period of adjustment of 218 days for the delay in mailing a non-final Office action until May 17, 2004.

Applicants state that the patent issuing from the application is not subject to a terminal disclaimer.

A review of the application history reveals that no response to the Office action mailed May 12, 2003 was considered timely filed by the Office and the application became abandoned. Applicants were advised of the abandonment by notice mailed December 8, 2003. The record establishes that, in response, on December 30, 2003, applicants filed a petition to revive (which was properly treated as a petition to withdraw the holding of abandonment). It is specifically noted that the petition to withdraw the holding of abandonment was filed within two months from the mailing date of a notice of abandonment. See § 1.704(c)(4). Moreover, by decision mailed March 2, 2004, the petition was granted on the basis that applicants had shown that a proper response was filed on June 12, 2003.

In view thereof, it is concluded that applicants did not fail to engage in reasonable efforts to conclude processing or examination of the application by delaying in replying to the Office action within the meaning of § 1.704(b).

Moreover, applicants are correct that given the showing of receipt of applicants' response in the Office on June 12, 2003, the application is entitled to a period of adjustment for Office delay. The Office did not take action in response until May 17, 2004. Pursuant to § 1.702(a)(2) and § 1.703(a)(2), the period of adjustment is 218 days, counting the number of days in the period beginning on the day after the date that is four months after the date a reply under § 1.111 was filed, October 13,

2003, and ending on the date of mailing of an action under 35 U.S.C. 132, May 17, 2004.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is 243 days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Pursuant to the NOTICE OF WITHDRAWAL FROM ISSUE UNDER 37 CFR 1.313(b) mailed June 13, 2005, the application is being returned to Technology Center AU 3723 for further action.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

Karin A Ferriter
KF

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of REVISED PAIR Screen